



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: APRIL 26, 2023

IN THE MATTER OF:

Appeal Board No. 628433 A

PRESENT: MARILYN P. O'MARA, MEMBER

The Appeal Board, on its motion pursuant to Labor Law § 534, has reopened and reconsidered Appeal Board No. 622245, filed June 27, 2022, which affirmed the decision of the Administrative Law Judge and sustained the initial determination disqualifying the claimant from receiving benefits, effective September 27, 2021, on the basis that the claimant voluntarily separated from employment without good cause.

Our review of the record reveals that the case should be remanded to hold a hearing. The claimant had sent documents to the Hearing Section beforehand. The Judge did not ask the claimant whether he sought to move the documents into evidence and did not determine the relevance of the documents. At the further hearing, the Judge should undertake the analysis and enter into evidence those documents that are relevant.

In addition, the parties should be questioned regarding the claimant's August 22, 2021 request for a religious accommodation, and the employer's September 2, 2021 and September 20, 2021 responses. The documents should be entered into the record after the appropriate confrontation and opportunity for comment.

Finally, we note that the theory of provoked discharge is inapplicable to the case at hand as Judge Hurd's TRO was issued on September 14, 2021 and went into effect on September 27, 2021, the same day as the claimant's employment ended.

Now, based on all of the foregoing, it is

ORDERED, that the decisions of the Appeal Board and the Administrative Law Judge be, and the same hereby are, rescinded; and it is further

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing on the issue, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and, so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision on the issue, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

MARILYN P. O'MARA, MEMBER